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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 4, 1997

Harvey Becker, Chief of Police
City of Goose Creek Police Department
P. O. Drawer 1768
Goose Creek, South Carolina 29445-1768

Re: Informal Opinion

Dear Chief Becker:

You have asked for my opinion regarding the following factual situation:

[i]n an effort to relieve our police officers from their duties in the courtroom so that they may return to their duty stations in a more timely manner, it has been suggested that the officer call all of the cases that defendants are present in the courtroom for. At the end of those cases the officer would poll the gallery, asking if there is anyone else present for that officer. If there are no defendants present for the officer trying his cases at that time, he may so inform the judge and ask that the remainder of his cases be tried in their absence. The officer would then be permitted to leave the courtroom to return to his patrol duties and the judge would sign off the tickets as "tried in absence" after court.

Some concern has been voiced that the defendant name and charge would not be placed on the record (tape), however, we have been advised by Court Administration that this is a normal practice of many of the South Carolina Courts and that they are unaware of any law prohibiting this practice.

Request letter

Law / Analysis

In Op. Atty. Gen., October 25, 1991, we commented at length regarding a person being tried in his absence. In that opinion, we addressed the situation as to the procedure to be followed when individuals who fail to appear in court for traffic offenses where no bond has been posted, there has been no request for continuance and no request for a jury trial. We quoted from the South Carolina Bench Book for Magistrates and Municipal Court Judges, pages III 77-78 as follows:

... an accused may be tried in absentia if he has been properly notified as to the time and place of the trial and does not appear at the appointed time ...

When a defendant who has been properly notified does not appear when the trial is scheduled,, the magistrate or municipal court judge should call his name, or direct that the constable call his name, three times from the courthouse door. After waiting a reasonable time, the magistrate or municipal judge may proceed.

A trial in absentia, as a procedural matter, is only slightly different from a trial at which the defendant appears. The complaining citizen or law enforcement officer is placed under oath and allowed to present his evidence. Other witnesses, if any, are permitted to testify under oath. Additionally, the constable is summoned to testify that he called the defendant's name, he lets the record show that the defendant's name was called and that he did not respond.

When the evidence is complete, the magistrate or municipal judge makes his findings. If the defendant is acquitted, the proceedings are terminated. If the defendant is found guilty, the magistrate or municipal judge imposes sentence, according to the penalty allowed for the offense by law. He may use the testimony presented, and any other facts at his disposal, in determining the sentence to be imposed. If the sentence is a fine the judge may (but does not have to) apply the forfeited bond to the sentence; if the sentence is a jail term, a bench warrant is issued for the arrest of the defendant

Chief Becker
Page 3
June 4, 1997

Referencing the above, the better procedure in the circumstance described by you would be to hold a bench trial in the manner set forth in the Bench Book and not simply sign off on a traffic citation. Following a conviction, procedures could be instituted under the NRUC or a bench warrant could be issued where appropriate. Therefore, I believe that a system in traffic cases whereby blanket questions are asked, a stack of citations are held up and a blanket statement by an officer is provided should be avoided.

This opinion remains the opinion of this Office and is the procedure which the Office recommends should always be followed. In short, if a defendant is tried in his absence, the State must still call the case as recommended in the Bench Book and must put up evidence to try the defendant in his absence as it would any other case.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an